

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RYAN J. RODRIGUEZ,

Plaintiff,

v.

CV 13-0344 WPL/RHS

CITY OF GRANTS, NEW MEXICO;
GRANTS POLICE OFFICER MOSES
MARQUEZ, individually; GRANTS
POLICE OFFICER ADRIAN ROANE,
individually; COUNTY OF CIBOLA;
and CIBOLA COUNTY JUVENILE
DETENTION FACILITY, CIBOLA
COUNTY JUVENILE DETENTION
FACILITY GUARDS, individually,

Defendants.

**ORDER GRANTING IN PART AND DEFERRING RULING IN PART ON
PLAINTIFF'S AMENDED MOTION FOR LEAVE TO AMEND
AND QUASHING ORDER TO SHOW CAUSE**

This matter is before me *sua sponte* and on Ryan J. Rodriguez's Amended Motion for Leave to Amend the Complaint (Doc. 31). On August 26, 2013, I entered an Order to Show Cause noting that certain Defendants in this case, namely Cibola County Juvenile Detention Facility ("CCJDF") and Cibola County Juvenile Detention Facility Guards ("CCJDF Guards"), had not been served and requiring Rodriguez to either serve those parties or show cause as to why he had not done so. (Doc. 18.) Rodriguez now concedes that these Defendants are not proper parties and seeks to amend his complaint so as to "delete" them from this action. (Doc. 31 at 1-2; *see also* Doc. 32 (Rodriguez's response to the Order to Show Cause).) Although Defendant County of Cibola appears to oppose the bulk of Rodriguez's attempt to amend his

complaint (*see* Doc. 28), it does not oppose the dismissal of CCJDF and CCJDF Guards (*see* Doc. 12 at 3-4 (motion to dismiss); Doc. 24 at 1 (reply in support of motion to dismiss)).

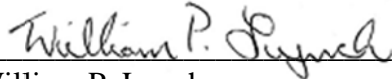
The docket reflects that all of the parties who have been served in this case have consented to have me serve as the presiding judge, resolve dispositive matters, and enter a final judgment pursuant to 28 U.S.C. § 636(c). (*See* Doc. 9; Doc. 11; Doc. 14.) Although CCJDF and CCJDF Guards, having not been served, have not consented to have me serve as the presiding judge, this does not deprive me of jurisdiction to allow Rodriguez leave to amend so as to dismiss the unserved Defendants from this case. *See Neals v. Norwood*, 59 F.3d 530, 532 (5th Cir. 1995); *see also Williams v. Gen. Elec. Capital Auto Lease, Inc.*, 159 F.3d 266, 269 (7th Cir. 1998) (“[T]he lack of consent of someone who is not a party to an action does not deprive the magistrate judge of jurisdiction.” (citing, *e.g.*, *Neals*, 59 F.3d at 532)). This is particularly true since Rodriguez could have stipulated to the dismissal of the unserved Defendants without a court order under Federal Rule of Civil Procedure 41(a)(1)(A). *See, e.g., Wilson v. City of San Jose*, 111 F.3d 688, 692 (9th Cir. 1997).

Having considered the pleadings, the filings, and the relevant law, I find that Rodriguez’s motion is well-taken with respect to dismissing the claims against CCJDF and CCJDF Guards. Therefore, all claims as to CCJDF and CCJDF Guards are hereby dismissed without prejudice, and those parties are dismissed from this action. Since doing so addresses the concerns I raised in my Order to Show Cause (Doc. 18), that Order is hereby quashed.

The remainder of Rodriguez’s amended motion intertwines with the arguments raised in the County of Cibola’s motion to dismiss (Doc. 12) and the proper responsive filings thereto (Doc. 19 (response); Doc. 24 (reply)). Because I find it appropriate to consider those motions together, I will defer ruling on the remainder of Rodriguez’s Amended Motion for Leave to

Amend (Doc. 31) until a later date. Further, because the amended motion supersedes Rodriguez's earlier motions seeking leave to amend the complaint (Doc. 26; Doc. 29), those earlier motions are hereby found to be moot.

IT IS SO ORDERED.



William P. Lynch
United States Magistrate Judge

A true copy of this order was served on the date of entry--via mail or electronic means--to counsel of record and any pro se party as they are shown on the Court's docket.